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April 18, 2007

FILED/ACCEPTED

APR 18 2007

federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

REDACTED – FOR PUBLIC INSPECTION

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 06-172: In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas

Dear Ms. Dortch:

Broadview Networks, Inc., Covad Communications Group, NuVox Communications and XO Communications, LLC, through counsel, hereby submit for filing with the Commission two (2) copies of their reply Comments on the above-referenced Petitions of the Verizon Telephone Companies. Please note, the attached submissions are redacted for public inspection, in accordance with the Second Protective Order in this proceeding. **A HIGHLY CONFIDENTIAL** version of the reply Comments also has been submitted to the Commission Secretary, with copies to Mr. Gary Remondino of the Wireline Competition Bureau, under separate cover.

Attached please also find a duplicate of this filing. Please date stamp the duplicate upon receipt, and return it to the courier. Please feel free to contact the undersigned counsel at (202) 342-8625 if you have any questions, or require further information.

Respectfully submitted,

Brett Heather Freedson

Brett Heather Freedson

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas	)	WC Docket No. 06-172

REPLY COMMENTS OF BROADVIEW NETWORKS, INC., COVAD COMMUNICATIONS GROUP, NUVOX COMMUNICATIONS, AND XO COMMUNICATIONS, LLC

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Dated: **April** 18,2007

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Broadview Networks, Inc., Covad Communications Group, NuVox Communications and XO Communications, LLC (hereinafter referred to as "Joint Commenters"), through counsel and pursuant to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission") on January 26, 2007,[1] hereby provide their reply comments on the petitions filed by Verizon on September 6, 2006 seeking forbearance from certain of the Commission's rules within six Metropolitan Statistical Areas ("MSAs"). Verizon seeks substantial deregulation, pursuant to section 10 of the Communications Act of 1934, as amended ("Act"),[2] within the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs.[3]

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1 *Wireline Competition Bureau Grants Extension of Time to File Comments on Verizon's Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas.* WC Docket No. 06-172, Public Notice, DA 07-277 (rel. Jan. 26, 2007).

2 47 U.S.C. § 160.

3 The Verizon Petitions request that the Commission forbear from applying to Verizon, within those markets: (1) loop and transport unbundling obligations, under 47 U.S.C. § 251(c) (47 C.F.R. §§ 51.319(a), (b) and (e)); (2) Part 61 dominant carrier tariff requirements (47 C.F.R. §§ 61.32, 61.33, 61.58 and 61.59); (3) Part 61 price cap regulations (47 C.F.R. §§ 61.41-61.49); (4) Computer III requirements, including CEI

I. INTRODUCTION AND SUMMARY

The initial comments filed in this proceeding resoundingly and unanimously verify that Verizon has exceeded all bounds of reason in its quest for deregulation. Verizon has failed to put forth even the pretext of a supportable factual case for its forbearance requests and the information Verizon has offered is of highly dubious value. The commenters suggest that Verizon has misused information, withheld information, exaggerated information, ignored information, and generally has acted in bad faith in this proceeding. This brazen conduct should not be tolerated by the Commission. Continuing to consider Verizon's Petitions would only waste Commission and industry time and resources. It is highly appropriate for the Commission to dismiss Verizon's Petitions immediately.

The initial comments verify that there is absolutely no support for the deregulation being sought by Verizon for the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs. The nearly two dozen entities filing comments – including cable companies, state and local governmental entities, consumer groups, large users, investors, and competitors – show that Verizon has not met the statutory requirements for forbearance and that a grant of forbearance would result in significant negative impacts on consumers in the six important MSAs at issue.

As a threshold matter, virtually every commenter emphasized that Verizon's Petitions should be dismissed because Verizon failed to provide the market-specific data necessary for the Commission to perform a meaningful forbearance analysis. The National Cable and Telecommunications Association ("NCTA") summarized the commenters' concerns

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and ONA requirements; and (4) dominant carrier requirements, arising under Section **214** of the Act and **Part** 63 of the Commission's rules, addressing the processes for acquiring lines, discontinuing services, assigning or transferring control and acquiring affiliation (47 C.F.R. §§ 63.03, 63.04, and 63.60-63.66).

when it stated, "Verizon has not provided any data on a wire center basis. Rather, it has made only general allegations about the level of competition throughout the relevant MSAs . . . Absent the type of detailed wire center information that the Commission relied on in the *Omaha* and *Anchorage Forbearance Orders,* the Commission cannot grant Verizon relief . . .."[4] Commenter after commenter explained that the limited data produced by Verizon failed to demonstrate the presence of significant facilities-based competition in any of the six MSAs, as required by section 10.[5] Moreover, the limited information Verizon did produce was criticized as incomplete and inflating the extent of competition Verizon faces. In the words of the Ad Hoc Telecommunications Users Committee, "Verizon exaggerates and overstates the actual extent of competition it confronts, particularly in residential markets."[6]

Many commenters also focused particularly on the consumer harms that would result if the Verizon Petitions are granted. For instance, the City of Philadelphia pointed out that Verizon "remains overwhelmingly dominant in the Philadelphia MSA" and that "enforcement of Section 251(c) [therefore] is necessary for the protection of consumers to prevent Verizon from discriminating against other carriers or leveraging the prices and availability of its own network to exclude competition."[7] The City of Philadelphia and others highlighted that the "last mile"

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4 Comments of the National Cable and Telecommunications Association, WC Docket No. 06-172, at 4 (filed Mar. 5,2007) *("NCTA Comments").*

5 *See, e.g.,* Comments of the National Association of State Utility Consumer Advocates, the Pennsylvania Office of Consumer Advocate, the Public Utility Law Project of New York, Inc., the Massachusetts Office of Attorney General, the Maryland Office of People's Counsel, the New Jersey Division of Rate Counsel, the New Hampshire Office of Consumer Advocate, and the Connecticut Office of Consumer Counsel, WC Docket No. 06-172, at 5 (filed Mar. 5,2007) ("*NASUCA Comments");* Sprint Nextel Corporation's Opposition to Petitions for Forbearance, WC Docket No. 06-172, at 15 (filed Mar. 5,2007) *("Sprint Nextel Opposition").*

6 Comments of Ad Hoc Telecommunications Users Committee, WC Docket No. 06-172, at 2 (filed Mar. 5,2007) ***("Ad Hoc** Comments").*

7 Comments of the City of Philadelphia, WC Docket No. 06-172, at 23-24 (filed Mar.5, 2007) ***("City** of Philadelphia Comments").*

deregulation sought in the Petitions would jeopardize access to basic telecommunications services by all, resulting in significant public interest harm.' This view was echoed in the Telecom Investors' opposition which stated: "[N]ot only will forbearance fail to promote competition, but basic economic theory dictates that it will diminish competition by serving to cement a cable/BOC duopoly that will discourage investment and harm consumers through undisciplined pricing and stifled innovation."'

The comments show that the MSAs for which Verizon seeks forbearance are significantly different from Omaha and Anchorage in size, scope, demographics, and competitive characteristics and that the forbearance test utilized in the Omaha and Anchorage proceedings likely will not suffice to protect consumers and justify forbearance in these significantly differing markets." This is particularly true when considering the cumulative effect that a grant of all or part of the six Verizon Petitions would have on competition and consumers throughout the Verizon local operating region." In short, the comments effectively catalogue the myriad procedural and substantive defects, that pervade the Verizon Petitions and demand that they be rejected by the Commission.

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8 *See, e.g., NASUCA Comments* at 52-61 (discussing how cable, wireless, and VoIP voice services are not true substitutes for Verizon's basic unbundled voice service).

9 Telecom Investors Opposition to Verizon's Petitions, WC Docket No. 06-172, at 33 (filed Mar. 5, 2007) *("Telecom Investors Opposition").*

10 *See, e.g., Sprint Nextel Opposition* at 8-9; Comments of the Pennsylvania Public Utility Commission, WC Docket No. 06-172, at 19 (filed Mar. 5, 2007) *("Pennsylvania PUC Comments").* Moreover, time already is clearly revealing that the Commission's determination in Omaha was misguided and that competition and consumers have suffered from Qwest's deregulation. ***See, e.g.,*** Comments of Integra Telecom, Inc., WC Docket No. 06-172, at 2-7 (filed Mar. 5, 2007) *("Integra Comments").*

11 *See, e.g.,* Opposition of EarthLink, Inc. and New Edge Network, Inc., WC Docket No. 06-172, at 2 (filed Mar. 5, 2007) *("EarthLink Opposition"); Pennsylvania PUC Comments* at 19-20.

II. THE DATA PROVIDED BY VEFUZON IS INSUFFICIENT TO MEET ITS BURDEN OF PROOF

In the recent *Qwest Omaha* opinion, the D.C. Circuit affirmed the Commission's finding in the *Omaha Forbearance Order*[12] that individual wire centers are the appropriate geographic market in which to consider whether forbearance from section 251(c) unbundling obligations is warranted.[13] Accordingly, Verizon should be required to provide (and already should have provided) the Commission (and interested parties) detailed data showing the nature and extent of competitive activity in each wire center in each subject MSA. The petitioning party has the burden of proof to bring forth this data and, if it fails to do so, its petition must be denied.[14]

Virtually every commenter noted that Verizon has failed to present *any* wire center-specific information.[15] Rather, it has made only general allegations regarding the level of competition in the six MSAs at issue. For example, as explained in the NCTA comments, "Verizon identified the percentage of wire centers within each MSA with competitive facilities, but made no attempt to identify the scope of those facilities within each wire center. Similarly,

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12 *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) *("Omaha Forbearance Order"), aff'd Qwest Corporation v. Federal Communications Commission*, Case No. 05-1450, (D.C. Cir. Mar. 23, 2007) *("Qwest Omaha").*

13 *Qwest Omaha*, Slip Op. at 14-16.

14 *See Omaha Forbearance Order*, ¶¶ 61-62; *see also* Comments of Broadview Networks, Inc., Covad Communications Group, NuVox Communications, and XO Communications, LLC, at 16-18 (filed Mar. 5, 2007) *("Joint Commenters Comments").*

15 *See, e.g.,* Opposition of Monmouth Telephone & Telegraph, Inc., WC Docket No. 06-172, at 9-10 (filed Mar. 5, 2007) *("Monmouth Opposition"); NASUCA Comments*, at 38; Comments of Time Warner Cable, WC Docket No. 06-172, at 2 (filed Mar. 5, 2007) *("Time Warner Cable Comments");* Comments of the Delaware Public Service Commission and the Delaware Division of the Public Advocate, WC Docket No. 06-172, at 4 (filed Mar. 5, 2007) *("Delaware PSC Comments");* Comments of the Public Utilities Commission of the State of California, WC Docket No. 06-172, at 4 (filed Mar. 5, 2007) *("California PUC Comments").*

Verizon provided information on line loss within each MSA, but made no attempt to show that same data on a wire center-by-wire center basis."[16] Verizon makes the sweeping assertion that competition in the New York and Philadelphia MSAs is more advanced than it was in Omaha,[17] but this assertion is not supported by any real data. As pointed out in the joint comments of Time Warner Telecom, Cbeyond, and One Communications, "the large geographic areas covered by the six MSAs for which Verizon seeks forbearance contain 'substantial topographical and density variations' and are not subject to uniform levels of competitive entry,"" yet Verizon has not provided any data that takes those variations into account. The "undifferentiated, anecdotal, and geographically irrelevant"[19] data presented by Verizon was rejected by the Commission in the *Omaha Forbearance Order,* and the Commission also should reject it here.

The limited "evidence" actually presented by Verizon is rife with flaws, as identified by numerous commenters. First, it is not clear how Verizon has treated its acquisition of MCI in the information it uses to support its Petitions.[20] Verizon fails to identify whether the line count loss figures it cites include lines previously served by MCI. As noted by NASUCA, "it would be disingenuous of Vericon to calculate its alleged loss of residential access lines to

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16 *NCTA Comments* at 4.

17 Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the New York Metropolitan Statistical Area (filed Sept. 6, 2006), at 2, 26; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area (filed Sept. 6, 2006), at 2, 26.

18 Comments of Time Wamer Telecom, Cbeyond Inc., and One Communications Corp., WC Docket No. 06-172, at 8 (filed Mar. 5,2007) *("Time Warner Telecom, et al. Comments"),* quoting *Petition of ACS of Anchorage, Inc. Pursuant to Section IO of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area,* Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007) *("Anchorage Forbearance Order").*

19 Comments of Cox Communications, Inc., WC Docket No. 06-172, at 8 (filed Mar. 5, 2007) ("Cox *Comments").*

20 *See NASUCA Comments* at 66; *Sprint Nextel Opposition* at 4.

competitors without including the residential lines it acquired through its merger with MCI."[21] Since MCI had been one of Verizon's largest competitors in the six MSAs at issue, Verizon's treatment of MCI's lines is highly relevant to the Commission's competitive analysis.[22]

Second, notwithstanding the fact that 60% of the residents of the State of Delaware would be affected if the Commission grants Verizon's request for forbearance throughout the Philadelphia MSA, Verizon has provided virtually no Delaware-specific data to support its request. Indeed, there are only two references in the entire Philadelphia MSA Petition to territory within the State of Delaware.[23] As stated by the Delaware Public Service Commission ("DE PSC"), "[w]ith the lack of Delaware-specific data, the DE PSC and the DPA [Division of Public Advocate] have no means to analyze Verizon's assertions that the present environment in New Castle County is sufficiently competitive to warrant forbearance from Section 251 loop and transport obligations."[24] Understandably, the Delaware PSC fears that if

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21 *NASUCA Comments* at 67.

22 The Commission also should heed the City of New York and more broadly consider the effects of Verizon's acquisition of MCI on competition in each of the six MSAs. The City of New York stated that prior to the acquisition of MCI by Verizon, the City had negotiated with MCI, but not finalized, a contract for voice and data services. After the MCI-Verizon merger, "Verizon repudiated the contract and instead was only willing to offer the City the same services for higher prices and on less favorable terms." Comments of the City of New York, WC Docket No. 06-172, at 3-4 (filed Mar. 5,2007) *("City of New York Comments").*

23 Verizon asserts that of the 5.8 million people estimated to live in the Philadelphia MSA, 9% live in the Delaware portion of the MSA. *Declaration of Quinton Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Philadelphia Metropolitan Statistical Area,* p. 3 ("*Lew/Verses/Garzillo Decl. – Philadelphia MSA*"). The only other Delaware-specific information consists of several maps purporting to show the deployment of intermodal competition and competitive fiber networks within the Philadelphia MSA. *See* Exhibits 3, 4, and 5 to the *Lew/Verses/Garzillo* ***Decl. –*** *Philadelphia MSA.*

24 *Delaware PSC Comments* at 4 (footnote omitted).

the Commission grants forbearance for the entire Philadelphia MSA without a Delaware-specific analysis, "the citizens of Delaware may suffer a threat to their competitive choices."[25]

A third shortcoming of the limited data presented by Verizon concerns its treatment of its Wholesale Advantage service. Verizon touts Wholesale Advantage as an "attractive wholesale offering" made available as a replacement for the Unbundled Network Element Platform ("UNE-P") "when it has no obligation to do so."[26] Verizon's Wholesale Advantage service offers the same features and functions of UNE-P; however, it is priced at so-called market (rather than TELRIC) rates. Although Verizon points to the existence of Wholesale Advantage contracts **as** evidence of competition in the mass market, Verizon provides absolutely no information regarding the terms of its Wholesale Advantage contracts, nor does it identify the current or future pricing of Wholesale Advantage service. As noted by the City of Philadelphia, "[w]ithout that information, it is impossible to determine whether [the contracts] really evidence competition and Verizon's reliance on their existence should be discounted."[27] It is not surprising that Verizon has failed to offer evidence to substantiate its contention that Wholesale Advantage is a commercially-viable service when one considers that Verizon had 4.45 million residential wholesale (*i.e.*, UNE-P, resale, and Wholesale Advantage) lines in the first quarter of 2004 but over *3* million less (*i.e.*, **1.35** million) by the fourth quarter of 2006.[28]

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25 *Id*.

26 Verizon Petition – Boston, at 14; Verizon Petition – New York, at 14, Verizon Petition – Philadelphia, at 14; Verizon Petition – Pittsburgh, at 14; Verizon Petition – Providence, at 14; Verizon Petition – Virginia Beach, at 14.

27 ***City** of Philadelphia **Comments,*** at 20. ***See** also* Opposition of Cavalier Telephone Subsidiaries to Verizon's Petitions for Forbearance, WC Docket No. 06-172, at 9 (filed Mar. 5, 2007) ***("Cavalier** Opposition*").

28 UBS, *Wireline **Postgame** Analysis **17.0: Recap** of **Fourth Quarter 2006 Results,*** at 35 (Mar. 20, 2007).

Fourth, as noted by Time Warner Telecom, et al., Verizon has failed to identify the extent to which the alternative facilities it points to as evidence of competition are located in wire centers in which Verizon already has gained relief from section 251(c)(3) unbundling requirements due to the operation of the *Triennial Review Remand Order's* impairment triggers.[29] There are numerous wire centers within the six MSAs at issue in which Verizon has been afforded some loop and/or transport unbundling relief due to the application of the *Triennial Review Remand Order's* impairment criteria. Thus, it is reasonable to conclude, in the absence of any evidence to the contrary, that any competitive facilities deployment that does exist within the six **MSAs** at issue has "already [been] taken into account through the extensive regulatory relief that Verizon has received by operation of the *TRRO* triggers."[30]

Fifth, Verizon's data regarding switched access line loss is flawed and misleading. Verizon suggests that to the extent a competitor drops a Verizon line, the customer is being served by a competitor.[31] In fact, as pointed out by numerous commenters, a decline in Verizon's number of access lines proves nothing regarding the extent of competition in the local exchange market.[32] **As** the Commission found in the *Anchorage Forbearance Order*, "abandonment of a residential access line does not necessarily indicate capture by a competitor."[33] Some portion of the reported line loss unquestionably reflects consumers who have converted a second line used for dial-up Internet access to a broadband line. And, as noted

29 *Time Warner Telecom. et al. Opposition* at 27

30 *Id.* at 28.

31 Verizon Petition – Boston, at 2; Verizon Petition – New **York,** at 2; Verizon Petition – Philadelphia, at 2; Verizon Petition – Pittsburgh, at 2; Verizon Petition – Providence, at 2; Verizon Petition – Virginia Beach, at 2.

32 *See, e.g., NCTA Comments,* at 9-10; *Cavalier Opposition* at 15-16; *NASUCA Comments* at 61-66; *Sprint Nextel Opposition* at 13-14.

33 *Anchorage Forbearance Order,* n. *88.*

by NCTA, "[i]n many of these cases, Verizon continues to serve the customer – for phone service, Internet service, or both."[34] Although some portion of the line loss also undoubtedly reflects consumers who have abandoned their wireline voice service in favor of a wireless offering, NCTA noted that "here too, because Verizon is one of the leading wireless providers in these markets, the loss of the line does not necessarily mean that Verizon has lost the customer."[35] Further, some consumers may have discontinued service completely or moved out of Verizon's operating territory.[36]

It also bears mention that, as noted by NASUCA, Verizon selected a starting point for its calculation of access line loss that maximizes this alleged loss.[37] According to Commission data, total residential end user switched access lines peaked in December 2000. The start of Verizon's data range thus coincides precisely with the time when the size of the market reached its peak due to demand for primary and secondary lines.[38]

Although Verizon no doubt possesses information that could provide some context for the line loss figures it has offered, Verizon has chosen not to provide that information. In the absence of any supporting documentation, the Commission cannot

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34 *NCTA Comments* at 10. *See also Sprint Nextel Opposition,* at 13 ("Verizon's line loss likely had far less to do with competition than with substitution of DSL service for former second lines.").

35 *Id.* Indeed, a recent UBS investment paper reports that as of the first quarter of 2004, Verizon had *35.5* million post-paid wireless subscribers. By the fourth quarter of 2006, however, the number of Verizon wireless subscribers had jumped to 54.8 million. UBS, *US Wireless **411,*** at 4 (Mar. 19,2007).

36 As noted by NASUCA, Commission data shows that "since 2003 there has been a significant decline in the overall telephone penetration rates in many states, including those represented within the six MSAs for which Verizon seeks forbearance." ***NASUCA** Comments* at 65.

37 *Id.* at 64-65.

38 *Id.,* citing Industry Analysis and Technology Division, FCC, "Local Telephone Competition: Status as of December 31, 2005," Table 2 (Jul. 2006).

reasonably support Verizon's claim that line losses "prove" the existence of competition in the MSAs at issue. As NCTA explained, "[t]he only conclusion the Commission can draw from Verizon's approach is that this additional information would demonstrate that line loss is not having a significant impact on Verizon . . . Accordingly, the Commission should not rely on the line loss data as a basis for granting any regulatory relief to Verizon.""

In fact, publicly available data suggests that Verizon has more than offset any access line losses with gains elsewhere. Cavalier summarized this data, and the conclusions it compels, as follows:

> If Verizon lost any wireline customers in the fourth quarter of 2006, then those losses should have been more than offset by the 2.3 million new customers added by Verizon Wireless, which gave that business a total of 59.1 million customers. Verizon also added 1.8 million new broadband connections (FiOS and DSL) in 2006. Even with the planned decline in the former MCI's mass market operations, Verizon's wireline revenues in the fourth quarter of 2006 reportedly increased by 36.1% compared to the fourth quarter of 2005, driven in large part by a 92.8% increase in data revenues.[40]

Moreover, recent Verizon pricing activity in a number of states, including Massachusetts, Pennsylvania, New Jersey, and Maryland, supports the conclusion that its purported line losses are a fiction intended to obscure the fact that it does not face competition sufficient to moderate its pricing behavior. NASUCA reported that over the past several months, Verizon has filed tariff revisions in these states that would substantially increase consumer rates.[41] NASUCA correctly noted that "[Verizon's] ability to impose and sustain a substantial

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39 *NCTA Comments* at 10.

40 ***Cavalier Opposition*** at 15-16 (footnotes and citations omitted).

41 *See* ***NASUCA*** *Comments* at 61-62. NASUCA reports that the proposed increases for Maryland are between 19% and 23%. *Id.* at 63.

price increase. . . for services in a market it contends is competitive is itself evidence that the market is not competitive."[42]

III. VERIZON HAS NOT ESTABLISHED THAT SUFFICIENT COMPETITION EXISTS WITHIN EACH RELEVANT MARKET TO WARRANT FORBEARANCE FROM STATUTORY UNBUNDLING REQUIREMENTS

To support its Petitions, Verizon offers the names of numerous cable-based, Voice over Internet Protocol ("VoIP"), wireless, and competitive local exchange carrier ("CLEC") providers purportedly offering competing services in the MSAs at issue.[43] As various commenters showed, however, Verizon has utterly failed to prove that it faces sufficient facilities-based competition to justify forbearance in any wire center in any of the six MSAs for which Verizon has sought regulatory relief.

A. Cable Competition

Verizon's principal foundational basis in each Petition is the presence of cable competitors in the relevant MSA.[44] Although Verizon has offered no data regarding cable provider penetration for voice services on a wire-center-by-wire-center basis, it generally contends that cable-based competition is sufficiently robust to justify forbearance throughout the six MSAs at issue.[45] It is telling that the cable companies actually operating in the six MSAs for which Verizon is seeking forbearance, and their trade association, have clearly and

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42 *Id.* at 62.

43 **See,** *e.g.,* Verizon Petition - Boston, at 22; Verizon Petition – New York, at 23; Verizon Petition – Philadelphia, at 23; Verizon Petition – Pittsburgh, at 21; Verizon Petition – Providence, at 21; Verizon Petition – Virginia Beach, at 21.

44 As noted in Cox's comments, "the Petitions purport to rely on competition from a number of sources, but the only competition for which [Verizon] provides meaningful quantification in the Virginia Beach **MSA** is that provided by Cox and, in the Providence MSA, that provided by Cox and Comcast." ***Cox Comments*** at **3.**

45 **See** Verizon Petition – New York, at 4-5; Verizon Petition – Philadelphia, at 4-5; Verizon Petition – Pittsburgh, at 4-5; Verizon Petition – Providence, at 4-5; Verizon Petition – Virginia Beach, at 4-5; Verizon Petition – Boston, at 4-5.

unequivocally informed the Commission that Verizon has grossly overstated cable competition in the voice market and that forbearance from section 251(c) unbundling requirements is not warranted.[46]

Data submitted by the cable companies proves that Verizon has greatly exaggerated the presence of cable operators in both the mass market and the enterprise market. With respect to the mass market, Comcast stated that it serves only approximately **[Begin Highly Confidential] [End Highly Confidential]** percent of homes it passes in the Boston MSA.[47] In the Pittsburgh MSA, the percentage of homes served by Comcast is slightly less, **[Begin Highly Confidential] [End Highly Confidential]** percent, and the figure for the Philadelphia MSA is similar.[48] Comcast notes that its penetration "is far below the 50%+ market share loss suffered by Qwest in Omaha."[49]

Cox and Time Warner Cable both focus on the limited extent of their service footprints to show that Verizon has also overstated their presence in the mass market for telephony services. Cox, which operates in the Virginia Beach and Providence MSAs, indicates that it does not have any facilities at all in "at least five franchise areas in the Virginia Beach MSA" and that "these franchise areas account for a significant fraction of the geographic area and population of the MSA."[50] According to Cox, Verizon overstates the percentage of homes

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46 *See, e.g., Cox Comments* at 4 ("The Petitions utterly fail . . . to justify granting Verizon relief from any of its Section 251(c) obligations."); Comments of Comcast Corporation, WC Docket No. 06-172, at 3 (filed Mar. 5,2007) *("Comcast Comments")* ("Verizon is clearly exaggerating its case.").

47 *Comcast Comments* at 4.

48 *Id.* Since Comcast does not pass all homes in the Boston, Philadelphia, or Pittsburgh MSAs, the percentages presented by Comcast "actually overstate Comcast's inroads into Verizon's market share. *Id.*

49 *Id.* The City of Philadelphia estimates that Comcast's penetration rate in the entire Philadelphia area television market is roughly 3.7%. *City of Philadelphia Comments* at 9.

50 Cox *Comments* at 25.

passed by Cox in the Virginia Beach MSA.[51] Further, Cox indicated that it does not even provide telephone service in all of the communities where it has cable facilities. For instance, Cox does not provide telephone service to a significant portion of its franchise territory in Gloncester County, Virginia, nor does it provide telephone service to the communities in the Virginia Beach MSA that are located in northern North Carolina.[52] Time Warner Cable indicates that its "limited footprint in the New York MSA" encompasses wire centers that account for only approximately **[Begin Confidential] [End Confidential]** percent of Verizon's residential access lines.[53]

The data for the enterprise market is even more compelling and also unequivocally shows that Verizon has dramatically overstated cable operators' success in and their ability to serve the enterprise market.[54] Verizon relies heavily on the contention that the cable operators in the six MSAs at issue have network facilities in place throughout each MSA that they can use to serve all enterprise customers.[55] As pointed out by NCTA, however, "[t]he underlying premise of Verizon's arguments – that a cable network that passes a particular area is capable of providing telephone service to all enterprise customers in that area – does not accurately reflect the reality of the marketplace."[56]

The numerous reasons why cable operators' offerings of mass market telephony and video services "do[ ] not automatically translate into a significant presence in the enterprise

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51 *Id.*

52 *Id.* at 25-26.

53 ***Time Warner Cable Comments*** at 20.

54 *See, e.g., NCTA* ***Comments*** at 5.

55 *See* Verizon Petition – New York, at 19; Verizon Petition – Philadelphia, at 19; Verizon Petition – Pittsburgh, at 18; Verizon Petition – Providence, at 18; Verizon Petition – Virginia Beach, at 18-19; Verizon Petition – Boston, at 18-19.

56 ***NCTA Comments*** at 5.

market"[57] were identified and addressed by NCTA and the individual cable companies. First, the commenters noted that the process of constructing last mile facilities to commercial buildings is difficult, time-consuming, and very expensive.[58] Time Warner Cable stated that it "is unable to reach most enterprise customers using its own last-mile facilities" and that "the cost of constructing new loop facilities can be prohibitive, particularly where customer demand is below the level of multiple DS3s."[59] Second, cable operators often face difficulties obtaining access to commercial buildings." According to Time Warner Cable, "building access problems . . . often limit a cable operator's ability to reach a customer even where it has fiber passing the customer's location."" Finally, Verizon enjoys substantial advantages in the enterprise market as a result of its superior resources and experience. In the New York MSA, Time Warner Cable acknowledges that it "is equipped to compete head to head with Verizon in [the mass] market segment; but [it] cannot come close to matching Verizon's superior resources (including network facilities and personnel) and experience serving enterprise customers, as reflected by [its] nascent presence in the enterprise market."[62]

In light of the challenges faced by cable companies attempting to serve enterprise customers, it is **not** surprising that cable companies today do not constitute a significant presence in the enterprise market in any of the six MSAs at issue. Comcast notes that although it "has provided some services to some business customers in the Boston, Pittsburgh and Philadelphia

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57 *Id*. at **6.**

58 *Id*.

59 ***Time Warner Cable Comments*** at 17.

60 ***NCTA Comments*** at 7.

61 ***Time Warner Cable Comments*** at 17.

62 *Id*. at 18.

MSAs," its "actual number of business customers is relatively small."[63] Comcast has not, to date, made any significant or sustained entry into the enterprise market in the Boston, Pittsburgh, or Philadelphia MSAs.[64] Similarly, Verizon's contentions regarding Cox's capabilities and success in the enterprise market in the Virginia Beach MSA are vastly overstated." According to Cox, Verizon's contention that Cox had **[Begin Highly Confidential] [End Highly Confidential]** business E911 listings (and thereby presumably the same number of business lines) in the Virginia Beach MSA as of December 2005 is "wildly inflated."[66] In reality, Cox actually served only **[Begin Confidential] [End Confidential]** and **[Begin Confidential] [End Confidential]**.[67]

Moreover, the City of Philadelphia makes the important point that the limited cable-based broadband data and voice competition that does exist is found only in certain demographic segments consisting of customers that have the economic resources and technological sophistication to require and obtain these services.[68] It points out that because cable-based voice services require the purchase of both a cable modem and replacement telephone equipment (as well as a "quality of service" router if broadband data and voice are to be handled simultaneously), "the cost of purchasing or leasing this additional equipment makes the cost of switching service providers high for consumers looking for a comparable alternative to Verizon's traditional voice service."[69] In the City of Philadelphia, where approximately one

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63 *Comcast* ***Comments*** at 4.

64 *Id.* at 5.

65 ***Cox Comments*** at 27.

66 ***Id.***

67 *Id.*

68 ***City*** *of Philadelphia* ***Comments*** at 10-14.

69 *Id.* at 10.

quarter of individuals and nearly 1 in 5 families are living below poverty level, the financial resources required to take advantage of cable-based services are out of reach for many residents?' These residents depend on traditional telephone service. Without competition among providers of traditional telephone service, however, costs for these low income consumers will increase. The City of Philadelphia concludes that continued enforcement of section 251(c) is necessary to maintain competition and protect these consumers.[71]

B. Over-the-Top VoIP Competition

In addition to cable, Verizon also points to over-the-top VoIP services in its attempt to demonstrate sufficient competition to warrant forbearance in the mass market.[72] Many commenters compellingly demonstrated that over-the-top VoIP services are simply not a source of facilities-based competition, because, by definition, they ride the facilities of another provider, which in many cases is Verizon itself.[73] Further, because VoIP requires an underlying broadband platform, "the current economies of the service often do not effectively meet the needs of large segments of the market."[74] As stated by the City of Philadelphia:

> Like the voice services provided by cable operators, the cost associated with such special equipment limits the ability of many consumers in the Philadelphia MSA *to* take advantage of this alternative service and limits its

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70 *Id*. at 13

71 *Id*. at 14.

72 *See, e.g.,* Verizon Petition - New York, at 12-14. *See also* Verizon Petition – Philadelphia, at 12-14; Verizon Petition – Pittsburgh, at 12-14; Verizon Petition – Providence, at 12-13; Verizon Petition – Virginia Beach, at 12-13; Verizon Petition – Boston, at 12-14. Verizon does not even attempt to rely on VoIP services to demonstrate competition in the enterprise market.

73 *See, e.g., City of Philadelphia Comments* at 18 ("VoIP providers that furnish service over the Internet rather than by means of their own facilities . . . require broadband access at the customer's premises . . .").

74 *City of New York Comments* at 2.

> competitive effect, particularly among the large proportion of low income individuals and families in this market?'

Additionally, as noted by the City of New York, "[s]ubstantial quality of service issues also remain to be resolved before VoIP can serve as an effective competitor for important segments of the mass market.""

Moreover, at the same time that it promotes over-the-top VoIP services as an increasingly significant source of competition for mass market services, Verizon is aggressively pursuing litigation that conceivably could destroy the over-the-top VoIP market. In its Petitions, Verizon states that while Vonage, the largest over-the-top VoIP provider, "served 600,000 customers at the time of [the Verizon-MCI merger] proceeding, that figure has now grown to more than two million, and Vonage reports that it is adding an average of more than 22,000 subscribers each week."[77] Verizon's Petitions fail to mention that it has brought suit against Vonage for patent infringement related to VoIP technology and that Vonage's potential liability is in the hundreds of millions of dollars.[78]

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75 *City of Philadelphia Comments* at 18.

76 *City of New **York** Comments* at 2. *See also NASUCA Comments*, at 50-51 (detailing why VoIP is not a substitute for basic local voice service); Opposition of Ionary Consulting, WC Docket No. 06-172, at 3-4 (filed Apr. 17, 2007) (*Ionary Opposition").*

77 *See, **e.g.**,* Verizon Petition --New York, at 13-14 (footnotes omitted).

78 On March 8,2007, the jury found for Verizon, concluding that Vonage infringed three of Verizon's patents. Verizon was awarded $58 million in damages for past infringement and a 5.5% future royalty rate was adopted. ***See, e.g.,*** Marguerite Reardon, "Vonage to Pay $58 Million in Verizon Patent Case," CNETNews.com, Mar. 8,2007, posted at http://news.com.com/2100-1036_3-6165747.html. The trial judge subsequently issued an injunction prohibiting Vonage from using the disputed technology, but stayed the injunction only as to current customers, thereby prohibiting Vonage from continuing to market its services. The U S. Court of Appeals for the Federal Circuit granted a temporary stay of the entire injunction on April 6, 2007 while it considers whether to adopt a permanent stay pending resolution of the appeal. ***See, e.g.,*** Alan Sipress and Sabrina Valle, "Vonage Gets a Reprieve in Court," washingtonpost.com, Apr. 7,2007, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/04/06/AR2007040601088_pf.html.

While the Verizon-Vonage patent infringement litigation is ongoing, and its final outcome is not certain, the possibility exists that Verizon ultimately will prevail and will be successful in forcing Vonage out of the market.[79] Vonage recently conceded that it does not have a "workaround" to sidestep Verizon's technology, which "goes to the heart of Vonage's business."[80] While it is too early to know the effect the Verizon-Vonage patent case will have on other over-the-top VoIP providers using similar technologies, some industry analysts speculate that it will significantly add to the problems already facing smaller players, and that in the future "growth in Internet phone service will largely be the province of large cable companies."[81]

It is the height of disingenuousness for Verizon to highlight competition from over-the-top VoIP providers as a justification for gaining substantial deregulation while, at precisely the same time, it is pursuing litigation that could potentially result in the demise of the over-the-top VoIP industry. The Commission should not allow Verizon to profit from this cynical effort. At a minimum, the current uncertainty pervading the over-the-top VoIP industry compels the Commission to ignore over-the-top VoIP when conducting its forbearance analysis.

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79 *See, e.g.,* Olga Kharif, "What the Verizon Verdict Means for Vonage," BusinessWeek.com, Mar. 9, 2007, *available ut* http://www.businessweek.com/technology/content/mar2007/tc20070309_887320.htm; Ritsuko Ando, "UPDATE 1-Vonage Shares Hit New Low After Court Ruling," Reuters, Apr. 9, 2007, *available at* http://eresearch.fidelity.com/eresearch/goto/evaluate/snapshot.jhtml?symbols=VG ("Analysts said winning an appeal or coming up with a way to work around the patents was vital to Vonage's survival."); Jim Duffy, "Vonage's Future Questioned After Latest Setback," Network World, Apr. 6, 2007, *available at* http://www.networkworld.com/news/2007/040607-vonage-on-brink.html?page=1.

80 Leslie Cauley, "Vonage: No Tech 'Workaround,' USA Today, Apr. 16,2007, *available at* http://www.usatoday.com/money/industries/telecom/2007-04-15-vonage-usat_N.htm?csp=34. The costs of this court battle already are taking a tremendous toll on Vonage. Vonage's stock, which debuted on the New York Stock Exchange in late May 2006 at $17 per share, closed at $3 per share on April 11,2007.

81 Alan Sipress, "Patent Ruling Impact: Internet Phone Upstart Could Lose a Technology and a Future," Washington Post, Apr. 6, 2007, at D-1, quoting April 3, 2007 Bernstein Research Report.

C. Competitive Wholesale Service Offerings

Many commenters undercut Verizon's weak attempt to justify forbearance on the basis ofwholesale alternatives to the use of its section 251(c)(3) network elements by detailing the lack of viable wholesale alternaxivesto Verizon's services and facilities to serve mass market and enterprise customers.[82] Monmouth Telephone & Telegraph ("Monmouth") submitted a declaration explaining that "Verizon is the only available supplier of the wholesale inputs that Monmouth needs to serve end users – specifically, DS1 loops and interoffice transport – in the parts of northern and central New Jersey where Monmouth operates."[83] Monmouth cautioned that granting Verizon's Petitions with respect to those portions of the New York and Philadelphia MSAs that cover northern and central New Jersey would "simply allow Verizon to impose additional costs on Monmouth and similarly situated entities."[84]

Cavalier, which provides service throughout the Philadelphia and Virginia Beach MSAs, noted that granting Verizon forbearance from section 251(c)(3) unbundling obligations would leave it "without any viable alternative to the unbundled loops and transport that it currently relies upon to provide service to its customers."[85] Cavalier warned that a grant of forbearance would "likely cause [it] *to* exit the markets in the Philadelphia and Virginia Beach MSAs," negatively impacting approximately 1.5 million residential and business lines.[86]

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82 ***See*** Verizon Petition – Boston, at 14-15, 23-24; Verizon Petition – New York, at 14-15, 25-26; Verizon Petition -- Philadelphia, at 14-16, 25-26; Verizon Petition – Pittsburgh, at 14-15, 23-24; Verizon Petition – Providence, at 13-14, 22-23; Verizon Petition – Virginia Beach, at 13-15, 23.

83 *Monmouth Opposition* at 2.

84 *Id.* at 7.

85 ***Cavalier*** *Opposition* at 12 (footnote omitted).

86 *Id.*

Sprint Nextel, which describes itself as "likely the largest non-BOC-affiliated enterprise services provider and purchaser of such services in each of [the six MSAs at issue],'' apprised the Commission that "to serve enterprise customers, viable wholesale alternatives to Verizon facilities are rare."[87] For example, of the **[Begin Confidential] [End Confidential]** locations where Sprint Nextel serves enterprise customers in the Boston **MSA,** only **[Begin Confidential] [End Confidential]** buildings have any alternative wholesale supplier presence, and Sprint Nextel is able to rely solely on the alternative wholesale supplier at only **[Begin Confidential] [End Confidential]** of those sites.[88]

The City of Philadelphia noted "the simple fact that Verizon continues to maintain monopolistic control of copper loops across the Philadelphia MSA" and admonished that elimination of the section 251(c)(3) unbundling requirement for those loops "will jeopardize . . . the continued existence of competition that all Philadelphia residents, whatever their income levels, can take advantage of."[89] More broadly, the Telecom Investors warned that "[w]ithout the essential cost-based UNE pricing safeguard [of section 251(c)(3)], there is nothing to prevent Verizon from raising prices on wholesale services to something 'close to or equal to' the retail rate, creating a price squeeze."[90]

In short, the comments provided no support whatsoever for Verizon's contention that viable wholesale alternatives to use of Verizon's unbundled network element ("UNE") loops and transport exist in any of the six MSAs. To the contrary, the comments clearly demonstrate that there are no alternatives to the use of Verizon's network facilities and services and, thus, that

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87 *Sprint **Nextel** Opposition* at 17-18.

88 ***Id.*** at **19** (footnote omitted).

89 *City of Philadelphia Comments* at 25.

90 *Telecom Investors Opposition* at **3.**

forbearance from section 251(c)(3) unbundling requirements would have a catastrophic impact on competition. And, as succinctly stated by the Telecom Investors, "[I]t is nonsense to base forbearance on the presence of competitors who use Verizon's wholesale services, since all of these services will be expressly eliminated or deregulated if forbearance is granted.""

IV. GRANTING FORBEARANCE WILL EFFECTIVELY RESULT IN A DUOPOLY IN THE SIX MSAS FOR 'WHICH REGULATORY RELIEF IS SOUGHT

As explained in many of the comments, currently there is insufficient competition – from cable providers or others – to justify forbearance in any wire center in any of the six MSAs for which Verizon has sought deregulation.[92] Further, the limited non-cable competition that does exist in those MSAs is dependent on the continued ability to access Verizon's loops and transport facilities pursuant *to* section 251(c)(3). Consequently, if access to Verizon's loops and transport facilities under section 251(c)(3) is eliminated, there is a reasonable possibility that the only entities that will be able to remain in the market to compete against Verizon will be the cable companies, to the extent those entities are able to provide service through use of their own facilities.[93]

Verizon no doubt will argue that cable competition alone will sufficiently discipline its pricing behavior to permit forbearance from federal unbundling requirements. **As** the group of investment firms that collectively have invested several billions of dollars in competitive telecommunications service providers pointed out, however, that claim is

91 *Telecom Investors Opposition* at iii.

92 *See Joint Commenters Comments* at 19-58.

93 **As** seen in the Anchorage forbearance proceeding, in some cases cable operators rely on incumbent local exchange carrier ("ILEC") section 251(c)(3) UNEs or other wholesale facilities to provide service, especially to enterprise customers. ***See*** *Anchorage Forbearance Order*, ¶ 36.

frivolous.[94] The duopoly market that would result would not be competitive.[95] The Telecom Investors noted the well-established economic principle

> that duopolies contribute to anticompetitive markets because both parties are reluctant to engage in mutually assured destruction. Any rate decrease or service enhancement must be met by the other. Consequently, both parties have an incentive to act so as to maximize joint profits, at the expense of competition.[96]

Notwithstanding its decision in the *Omaha Forbearance Order,* the Commission understands that entities in duopoly or oligopoly markets take their rivals' actions into account in deciding the actions they will take, and that "when market participants' actions are interdependent, noncompetitive collusive behavior that closely resembles cartel behavior may result – that is, high and stable prices."" The Commission has long recognized that

> [a]lthough competition theory does not provide a hard and fast rule on the number of equally sized competitors that are necessary to ensure that the full benefits of competition are realized, both economic theory and empirical studies suggest that a market that has five or more relatively equal sized firms can achieve a level of market performance comparable to a fragmented, structurally competitive market.[98]

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94 *See Telecom Investors Opposition* at *8*.

95 *See Cavalier Opposition* at 13 ("Without Cavalier and other carriers providing competitive pricing, a Verizon-cable duopoly could then increase the already higher prices that they charge . . ."); *NASUCA Comments* at 20 ("The deterioration of CLEC-based competition resulting from forbearance from loop unbundling requirements would accelerate the potential creation of an ILEC-cable duopoly . . . As the Commission is aware, duopoly market structure does not result in an efficient, vibrant competitive market; therefore, regulatory forbearance that promotes the development of a duopoly market result would not promote competitive market conditions or enhance competition . . . as required by section 160(b).").

96 *Id.* at 9.

97 *Application of Echostar Communications Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, ¶ 170 (2002) (*"Echostar Order").*

98 *2002 Biennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620,1289 (2002).

The D.C. Circuit agrees with this assessment, finding that "where rivals are few, firms will be able to coordinate their behavior, either by overt collusion or implicit understanding, in order to restrict output and achieve profits above competitive levels."[99] The court added that "a durable duopoly affords both the opportunity and the incentive for both firms to coordinate to increase prices . . . above competitive levels."[100]

In light of the significant possibility that premature elimination of section 251(c)(3) unbundling obligations ultimately will result, at best,"' in a Verizon-cable duopoly which will necessarily lead to less choice in service offerings and higher prices for consumers, Verizon's request for forbearance from section 251(c)(3) requirements in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach MSAs must be denied.

V. SECTION 251 HAS NOT BEEN FULLY IMPLEMENTED AS REQUIRED BY SECTION 10(D)

In *Qwest Omaha,* the D.C. Circuit found that the Commission's conclusion that section 251(c) was "fully implemented pursuant to section 10(d) once it had promulgated rules implementing section 251(c) and those rules had taken effect was not unreasonable.[102] The court declined to rule, however, whether the "fully implemented" requirement is broader, and requires an acknowledgment that both the states and service providers have a role in implementing section 251(c).[103] The Joint Commenters maintain that the legal requirement is indeed broader and that the Commission should decline to grant Verizon forbearance from its unbundling

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99 *FTC v. H.J. **Heinz** Co.,* 246 F.3d 708, 715 (D.C. Cir. 2001)

100 *Id.* at 725.

101 **A** duopoly only will result in those circumstances where the cable provider is able to use its own facilities to provide service. If the cable operator is forced to **rely** on Verizon's network to reach customers – a situation that is especially prevalent with enterprise customers – Verizon will be the only carrier that can successfully compete.

102 *Qwest Omaha,* Slip Op. at 12.

103 *Id.* at 14.

obligations on the grounds that section 251(c)(3) has, in fact, not been "fully implemented." As the Commission itself has previously recognized, implementation of sections 251(c) and 252 involves substantial activity by the states as well as the Commission.

When adopting its initial rules to implement sections 251 and 252 of the Telecommunications Act of 1996, the Commission acknowledged the shared federal and state responsibility to implement and administer sections 251 and 252, concluding that "Congress envisioned complementary and significant roles for the Commission and the states."[104] The Commission determined that while "some national rules are necessary to promote Congress's goals for a national policy framework and serve the public interest, [ ] the states should have the major responsibility for prescribing the specific terms and conditions that will lead to competition in local exchange markets."[105]

Since Congress intended that the states share jurisdiction with the Commission to implement sections 251 and 252, and that the states otherwise "play a critical role in promoting local competition,"[106] it cannot be the case that Congress intended section 251(c) to be "fully implemented" merely when the Commission has adopted and published rules in the Federal Register. The Commission previously has recognized that its promulgation of section 251 implementing rules is only the first step in the process of implementing sections 251 and 252, stating in the *First Report and Order* that "[t]he steps we take today *are* the initial measures that will enable the states and the Commission to *begin to implement* sections 251 and 252."[107]

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104 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 F.C.C.R. 15,499, 15,557-58 (1996) *("First Report and Order").*

105 *Id.* at 15,520.

106 *Id.* at 15,566.

107 *Id,* at 15,507 (emphasis supplied).

The correct application of the section 10(d) "fully implemented requirement necessitates a review of state sections 251(c) and 252 implementation efforts. The conclusion that section 251(c) has been fully implemented must be predicated on the conclusion that both the Commission and the particular states in question (in this case, including Massachusetts, New Hampshire, New York, New Jersey.,Pennsylvania, Delaware, Rhode Island, Virginia, and North Carolina) have fully executed their obligations regarding sections 251 and 252. Moreover, as the petitioning party, Verizon has the burden of proof to show that each regulatory entity has executed its responsibility to implement the local market opening requirements of sections 251 and 252. Here, Verizon has proffered no such evidence. Consequently, the Commission cannot conclude that the section 10(d) requirement has been met and section 251 has been fully implemented

VI. VERIZON HAS NOT SHOWN IT IS ENTITLED TO RELIEF FROM DOMINANT CARRIER OR COMPUTER III REQUIREMENTS

Numerous commenters showed that Verizon has failed to prove it is entitled to forbearance from Part 61 dominant carrier tariffing requirements, dominant carrier requirements arising under section 214 of the Act and Part 63 of the Commission's rules, or the Commission's Computer III rules, including CEI and ONA requirements. As noted by Time Warner Telecom, et al., "Verizon barely even attempts to support these requests with evidence or reasoned argument."'[108]

As noted by the Commission in the ***Omaha Forbearance Order,*** forbearance from dominant carrier regulation must be preceded by a finding that the ILEC seeking forbearance no longer has market power in the provision of the services for which it seeks forbearance."'

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108 ***Time Warner Telecom, et al. Opposition*** at 48

109 ***Omaha Forbearance Order*** at ¶ 22.

Market share, supply and demand elasticities, and the firm's cost, structure, size and resources are all relevant to an analysis of whether the ILEC seeking freedom from dominant carrier regulation retains market power,"' yet Verizon has not provided the type of information that would allow the Commission to cortduct the required analysis for any of the six MSAs at issue.

Verizon's lack of proof is not surprising in light of the fact, noted by COMPTEL, that "evidence in the public record . . . belie[s] Verizon's claims of robust competition . . ."[111] Sprint Nextel summarized the points articulated by many commenters when it stated:

> [Verizon] plainly remains the dominant retail local exchange carrier in these MSAs, continues to hold the vast majority of lines, and clearly has power over competitors and customers. The fact that cable-TV based competitors are beginning to provide retail competitive pressure does little to remove Verizon's power in the enterprise and wholesale markets . . . The Petitions also ignore that retail competitors – particularly in the enterprise market – still rely heavily on Verizon facilities to provides services in these MSAs, and Verizon remains unquestionably dominant in the wholesale market because of its power over special access.[112]

The Commission itself recently concluded that Verizon retains market power in its local exchange markets, holding that "market share calculations indicate a high level of concentration in most franchise areas in Verizon's states" and finding these levels of concentration "problematic."][113]

In light of the fact that Verizon remains market power in the six MSAs at issue, continued application of dominant carrier and Computer III regulatory requirements is necessary

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110 ***Id.*** at ¶ 31.

111 Opposition of COMPTEL , WC Docket No. 06-172, at 15 (filed. Mar. 5, 2007) ***("COMPTEL Opposition").***

112 ***Sprint Nextel Opposition*** at 7-8.

113 ***See Verizon Communications*** *Inc. and MCI Inc.* ***Applications for Approval & Transfer of Control,*** Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 103 (2005) ***("Verizon-MCI Merger Order").***

to ensure just and reasonable, and nondiscriminatory rates and terms for the mass market, enterprise market, and wholesale market services Verizon provides.[114] Consequently, Verizon's request for forbearance from dominant carrier and Computer III rules should be denied.

VII. CONCLUSION

For each of the forgoing reasons, and for the reasons set forth in the comments of the Joint Commenters, Verizon's Petitions should be dismissed. If the Commission declines to dismiss the Petitions, it must deny Verizon the regulatory relief it seeks on the ground that Verizon has not met the statutory prerequisites for forbearance contained in section 10 of the Act.

Respectfully submitted,

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Dated: April 18, **2007**

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114 *See Time Warner Telecom, et al. Opposition* at **48;** *Sprint Nextel Opposition* at *30; COMPTEL Opposition* at **22; NASUCA** *Comments* at **21-37.**